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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN SOLORIO QUINTERO,

Defendant and Appellant.

G051200

(Super. Ct. No. 10WF0437)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Vicki Hix, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed in part, reversed in part, remanded.

Robert Booher, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson, Lynne G. McGinnis and Kristine A. Gutierrez, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Steven Solorio Quintero appeals the trial court’s partial denial of his motion pursuant to Penal Code section 1170.18.<sup>1</sup> He argues the court erred in its interpretation of the statute and resentenced him incorrectly. We affirm in part and reverse in part, and remand for resentencing and a recalculation of credits and fines.

## I

### FACTS

In August 2010, defendant pleaded guilty to being under the influence of methamphetamine (Health & Saf. Code, § 11377, subd. (a)) and admitted a prior strike. A second count was dismissed. He was sentenced to 32 months in prison.

On December 12, 2014, defendant petitioned to reduce the charge to a misdemeanor pursuant to section 1170.18, subdivision (f),<sup>2</sup> or in the alternative, for a recall of his felony sentence under subdivision (a). His petition stated he had completed his sentence. He was serving postrelease community supervision (PRCS).

The court granted the petition under subdivision (a), sentenced him to 730 days in jail, gave him 730 days of credit, placed him on one year of parole pursuant to section 1170.18, subdivision (d), and imposed various fines and fees. Defendant now appeals.

## II

### DISCUSSION

#### *Propriety of Parole*

“Proposition 47 reclassified certain drug-and theft-related offenses from felonies (or wobblers) to misdemeanors. [Citation.] The measure reduced ‘penalties for

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<sup>1</sup> Subsequent statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> All references to subdivisions refer to section 1170.18.

certain offenders convicted of nonserious and nonviolent property and drug crimes.’ [Citation.]” (*People v. Armogeda* (Sept. 30, 2015, G051197) \_\_Cal.App.4th \_\_ [2015 WL 5722848, p. \*1] (*Armogeda*).)

Section 1170.18, enacted as part of Proposition 47, allows those convicted of a reclassified offense prior to November 5, 2014 to petition for a reduction of their conviction from a felony to a misdemeanor. (§ 1170.18.) The statute treats those who are currently serving a sentence and those who have completed their sentence somewhat differently.

An individual “currently serving a sentence” may petition under subdivision (a) of the statute. Subdivision (b) states the court must recall the felony sentence of an eligible petitioner, and resentence the petitioner to a misdemeanor unless the court determines that doing so would unreasonably endanger the public. Under subdivision (d), a person resentenced under subdivision (b) is “given credit for time served” and is generally “subject to parole for one year following completion of his or her sentence.”

In contrast, subdivision (f) permits someone who has “completed his or her sentence” of a reclassified offense may apply to have the conviction reclassified as a misdemeanor. Unlike subdivision (a), there is no period of parole under subdivision (f).

The crux of the matter comes down to whether serving parole and PRCS constitute “serving a sentence” under section 1170.18. This court recently concluded that it did in *Armogeda*, *supra*, 2015 WL 5722848, at page \*1, and we reach the same decision here. As we stated in that case, the overall statutory scheme supports such a conclusion. (*Id.* at p. \*3.) “Section 3000, subdivision (a)(1) mandates that a determinate felony sentence ‘shall include’ a period of parole supervision or PRCS. Section 1170, subdivision (c) recognizes this expansive scope of a determinate felony sentence, providing in relevant part: ‘The court shall state the reasons for its sentence choice [of the low, middle, or upper prison term] on the record at the time of sentencing. The court

shall also inform the defendant that *as part of the sentence after expiration of the term* he or she may be on parole for a period as provided in Section 3000.’ [Citations.]” (*Ibid.*) “We presume that the voters who enacted Proposition 47, and the proposition’s drafters, were aware that the law defines a determinate felony sentence to include a prison term and a period of parole/PRCS. [Citations.] Accordingly, we presume the voters and the drafters intended subdivisions (a) and (f)’s felony ‘sentence’ to include a prison term and a period of parole/PRCS.” (*Ibid.*, fn. omitted.)

We agree, therefore find no error with respect to this issue.

### *Unauthorized Sentence*

Defendant next contends the trial court erred by imposing an unauthorized sentence of 730 days when the maximum sentence for a misdemeanor violation of Health and Safety Code section 11377, subdivision (a), is 365 days. Unfortunately the record is ambiguous, and the case must be remanded for resentencing.

At the time of the resentencing hearing on defendant’s petition, the court seemed to indicate defendant had two counts and two cases, and imposed 365 days for each count. It is unclear what the court was referring to or if there was error, and accordingly, we remand the case for resentencing.

### *Recalculation of Credits and Fines*

Defendant next argues his credits and fines must be recalculated because he had more than 730 days of credits. The Attorney General argues he is not entitled to any credit and must serve a full one year of parole under subdivision (d). We disagree, in accord with our recent decision in *Armogeda*, *supra*, 2015 WL 5722848, at pages \*4-\*6, which addressed this very issue, and adopt the same reasoning here. Defendant’s excess custody credits must be applied to reduce his parole period, and we direct the trial court to recalculate such credits and fines on remand.

### *Length of Parole*

Defendant also argues that even if we conclude parole or PRCS is part of defendant's sentence, the court could not impose a period of parole that would be longer than they would have served if they had not sought resentencing. Defendant is correct. (*People v. Pinon* (2015) 238 Cal.App.4th 1232.) Unfortunately we do not know if this actually happened in this case, as the record does not reflect how much time defendant already served on parole and PRCS and how much time he has left. Given that we are remanding this case for the reasons stated above, we suspect this will no longer be an issue, but caution the trial court to avoid such a result on remand.

### *Restitution and Parole Revocation Fine*

When defendant was originally sentenced in 2010, the court imposed a felony restitution fine of \$200 and a parole revocation fine of \$200. Defendant now contends these fines should have been reduced to the appropriate misdemeanor amounts of \$100 each.

This issue was also addressed in *Armogeda, supra*, 2015 WL 5722848, at pages \*6-\*7. We concluded that because defendant failed to object below, he has forfeited the contention on appeal. The same applies here. Because the fines were lawful under current law and the law in effect at the time of sentencing, defendant's failure to object below results in a waiver of this argument on appeal. (*Ibid.*; see also *People v. Pinon, supra*, 238 Cal.App.4th 1232.)

III  
DISPOSITION

The judgment is affirmed in part, reversed in part, and remanded for resentencing in accordance with this opinion.

MOORE, ACTING P. J.

WE CONCUR:

FYBEL, J.

IKOLA, J.